

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD ROSS HANSEN, and  
DIANE RENEE ERDMANN,

Defendants.

Case No. CR18-0092-RAJ

**MOTION TO CONTINUE  
SENTENCING**

NOTE ON MOTION CALENDAR:  
October 15, 2021

Ross Hansen respectfully asks that the Court continue the sentencing date in this matter for seven weeks so that his counsel has adequate time to prepare for sentencing. This case is complex and immense, and preparing for sentencing is a major undertaking. Calculating the loss amount alone is a complicated and labor-intensive endeavor: The loss spreadsheet that the government provided last Thursday, for example, contains over 9,500 rows of data and includes a category of victims that were not covered by any of the counts during the trial. Counsel needs more time to analyze this data and anticipates needing to work with an expert to do so. The government also informed counsel last week that it was in the process of producing more than 400 pages of victim-impact statements, which counsel needs time to analyze. Defense counsel would also like additional time to allow both the defense and probation to verify and incorporate information from Mr. Hansen's medical history into their respective sentencing submissions. A continuance would also

MOTION TO CONTINUE SENTENCING  
(Case No. 18-cr-0092-RAJ) - 1

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1 allow time for counsel to analyze an important issue that is raised in the *ex parte* declaration of  
2 Angelo Calfo.

3 Atop all of this remaining work for sentencing, counsel has to balance pre-existing  
4 professional and personal commitments. One of Mr. Hansen's attorneys, Angelo Calfo, needs to  
5 spend much of the next month preparing for a criminal trial in November, and is scheduled to speak  
6 at a national conference in Miami the week of the sentencing. The other attorney familiar with the  
7 case, Henry Phillips, is getting married this Saturday and will be on his honeymoon outside the  
8 country for two and a half weeks immediately afterwards, not returning to the office until the day  
9 before the sentencing date.

10 With these professional and family commitments, and with the extensive work remaining  
11 ahead of sentencing, it is impracticable for counsel to adequately prepare for an October 29  
12 sentencing. Accordingly, Mr. Hansen asks that the sentencing date be continued by seven weeks  
13 until December 17 to allow time for counsel to adequately prepare.

### 14 **Background**

15 Mr. Hansen was charged with 20 counts of mail and wire fraud in April 2018. Dkt. 1. Five  
16 of those counts were dismissed prior to trial. In July 2021, he proceeded to trial on the remaining  
17 15 counts. After a 16-day trial, Mr. Hansen was found guilty on 14 of 15 counts. The Court set the  
18 sentencing date for October 29, 2021. Mr. Hansen is facing a sentence of up to 20 years on each of  
19 the 14 counts of fraud. *See* 18 U.S.C. §§ 1341, 1343.

20 Angelo Calfo and Henry Phillips are the two lawyers at Calfo Eakes LLP familiar with Mr.  
21 Hansen's case. Public Declaration of Angelo J. Calfo ("Public Calfo Decl") ¶ 2.<sup>1</sup> Mr. Calfo is  
22 scheduled to begin a trial before this Court on November 30, 2021. *See United States v. Sanft*, 19-  
23 cr-258-RAJ. Mr. Calfo anticipates needing to focus much of his time between now and then on trial  
24

25 <sup>1</sup> The third lawyer who represented Mr. Hansen at trial, Anna Cavnar, no longer works at Calfo Eakes LLP and has  
withdrawn from this case. Dkt. 357.

1 preparation and pretrial litigation. Public Calfo Decl. ¶ 3. Mr. Calfo is also presenting at the ABA's  
2 Conference on White Collar Crime in Miami on October 27, 2021, and would like as a matter of  
3 professional development to remain at the conference for its duration, October 27–29. *Id.* ¶ 4. Mr.  
4 Phillips is the only other lawyer at Mr. Calfo's firm that is familiar with Mr. Hansen's case. *Id.* ¶ 2.  
5 He is getting married on October 9, 2021, and has a honeymoon outside the country that begins the  
6 day after the wedding and extends through October 27, 2021. Declaration of Henry C. Phillips  
7 ("Phillips Decl.") ¶ 2. Both the wedding and the honeymoon were planned and largely paid for  
8 before the Court set the sentencing date in this case. *Id.* ¶ 2. Both Mr. Calfo and Mr. Phillips also  
9 have considerable additional professional commitments to attend to between now and October 29.  
10 *See* Public Calfo Decl. ¶ 3; Phillips Decl. ¶ 3.

11 On September 30, 2021, the government provided the defense with a letter and spreadsheet  
12 detailing the government's loss-amount calculation. *Id.* ¶ 5. The spreadsheet contained more than  
13 9,500 rows of data, purportedly supporting a loss amount of more than \$33 million (which is millions  
14 of dollars higher than the number in the draft presentence report from the probation office). *Id.*  
15 Included on this spreadsheet were losses not just for the charged offenses, but for all customers with  
16 unfulfilled orders, storage customers, and customers with refunds that were requested and never  
17 paid. *Id.* No customers in this last category—those with unpaid refunds—were named as victims  
18 in the charged offenses at trial. *Id.* The spreadsheet also includes references to claims that were  
19 filed in the bankruptcy case, of which thousands were filed, many of which should not be included  
20 in the loss amount because they were submitted by vendors or others non-victims of the scheme  
21 presented at trial. *Id.* Given that this spreadsheet was provided late last week, Mr. Hansen has not  
22 yet had the opportunity to work with an expert to examine this spreadsheet and rebut the  
23 government's proposed loss amounts. *Id.* The government also informed counsel late last week that  
24 it was in the process of producing more than 400 pages of victim impact statements, which counsel  
25 was able to download earlier today. *Id.* ¶ 6.

Even aside from determining the applicable loss amount, more work is necessary to develop a sentencing memorandum. Mr. Hansen had his presentence interview with the probation office on September 16. *Id.* ¶ 4. The probation office provided him information and release forms to complete the afternoon before his interview, but, due to technical difficulties in opening the fillable pdf forms, Mr. Hansen was delayed in completing those forms. *Id.* He was not able to complete them until September 29, 2021. *Id.* The probation office had already provided counsel with a draft presentence report by that point, having done so September 24, asking for objections and clarifications by October 8. *Id.* When counsel provided Mr. Hansen's information and release forms to probation on September 29, he asked whether the probation office planned to update the draft presentence report to reflect the newly released information. *Id.* Counsel has not yet received a response, and, as a result, much of the information in the presentence report remains unverified. *Id.* Meanwhile, counsel has been working with Mr. Hansen to prepare him for sentencing, which will also likely require additional time and potentially Court intervention. *See Ex Parte* Declaration of Angelo J. Calfo ("Ex Parte Calfo Decl.") ¶ 2–3.

### **Positions of Probation and the Government**

The probation office has indicated that it does not oppose a continuance of the sentencing date to December 17. Phillips Decl. ¶ 7. Counsel for the government has indicated that it will not stipulate to a continuance of the sentencing date. *Id.*

### **Legal Standard**

This Court has broad discretion to grant a request to continue the sentencing date. *See United States v. Mejia*, 69 F.3d 309, 314 (9th Cir. 1995). In exercising that discretion, courts look to: (1) the diligence of the party requesting the continuance; (2) the likelihood that the continuance will be for a useful purpose; (3) the extent to which granting the continuance will prejudice the opposing party; and (4) the extent to which the party requesting the party might suffer harm if the continuance is not granted. *Id.*

### Argument

Each of the 14 counts of fraud that Mr. Hansen was convicted of carries a maximum sentence of 20 years imprisonment. As a result, Mr. Hansen could potentially be facing a sentence that would ensure he dies in prison. Preparing for a sentencing of this type requires extensive time and effort. Unfortunately, due to pre-existing commitments, neither of the lawyers familiar with Mr. Hansen's case are in a position to complete the necessary work by the current sentencing date of October 29, even despite their diligence in representing Mr. Hansen in post-trial proceedings to date. A brief continuance of the sentencing date is therefore necessary in this case to ensure that Mr. Hansen's counsel is adequately prepared for sentencing. Granting the continuance is unlikely to prejudice the government in any meaningful way, but denying the continuance could significantly harm Mr. Hansen's ability to fully develop and present his arguments at sentencing on the many legal and factual issues before the Court.

To name just one of those issues, counsel needs additional time to analyze the government's and the probation office's proposed loss amounts. Calculating an accurate loss amount in a case like this one is an intensive exercise, that will likely require the services of an expert familiar with the capabilities and limitations of the Epicor system from which most of the government's data is derived. Not only that, there are intricate legal issues involved in calculating such a loss amount, such as determining whether those losses were in fact caused by the scheme or were actually caused by other forces that would have been unforeseeable to Mr. Hansen. *See United States v. Hicks*, 217 F.3d 1038, 1049 (9th Cir. 2000). And there is also the question of whether the loss amounts are reliable in any meaningful way. As multiple witnesses acknowledged during trial, NWTM kept poor records and the data in the Epicor system was unreliable. A seven-week continuance will be useful in providing counsel for Mr. Hansen the time needed to analyze and prepare arguments on these issues at sentencing. This is in addition to the other work that counsel still must do, including analyzing the more than 400 pages of victim-impact statements, ensuring that the presentence report

1 accurately reflects the information provided to probation and the evidence presented during the four  
 2 weeks of trial, and also gathering mitigating information for the Court. As explained in the ex parte  
 3 submission of Mr. Calfo, gathering mitigating information will likely require further legal analysis  
 4 and potentially Court involvement. *See Ex Parte Calfo Decl.* ¶ 2–3. Not allowing counsel to pursue  
 5 these issues—when the stakes for Mr. Hansen are this high—would indeed be likely to prejudice  
 6 Mr. Hansen.

7 The government, on the other hand, is not likely to be prejudiced by a continuance. Counsel  
 8 for the government has not represented that they have any conflicts for December 17 or provided  
 9 any pressing reason why the sentencing must occur before that date. Mr. Hansen has complied with  
 10 all of the conditions of his release since the trial and is likely to continue to do so should the  
 11 sentencing be continued by seven weeks.

### 12 Conclusion

13 For the above reasons, Mr. Hansen respectfully requests that this Court continue the  
 14 sentencing date in this matter from October 29, 2021, to December 17, 2021.

15 DATED this 4th day of October, 2021.

16 CALFO EAKES LLP

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